

Mediation in Juvenile Dependency Court: Multiple Perspectives

BY JUDGE LEONARD P. EDWARDS AND THE
SANTA CLARA COUNTY MODEL COURT TEAM MEMBERS

A B S T R A C T

For approximately 10 years, the Santa Clara County (Calif.),¹ Juvenile Dependency Court has utilized confidential mediation as an integral part of the court process. After hundreds of mediation sessions, we believe it is time for the various participants in the dependency system to reflect on their perspectives on mediation, its strengths and weaknesses, and its future in our court system. Each author, representing a different party or interest in the child welfare system, has a unique perspective on the process. We hope this information will be useful for other jurisdictions utilizing or considering implementing mediation.

Beginning with a description of dependency mediation and the mediation process utilized in Santa Clara County, representatives from each participant in the juvenile dependency process—including the mediators, the social worker, the attorney for the family and children's services agency, the child's attorney, the parents, the parents' attorney, a domestic violence advocate, the child advocate (CASA), and the juvenile court judicial officer—follow with their perspectives on mediation. The article concludes with some general thoughts about mediation, its value, its problems, and its future in Santa Clara County.

A. MEDIATION

Steve Baron, Assistant Director of Family Court Services,
Santa Clara County Supervisor of Dependency Mediation

Definition

The Santa Clara County Juvenile Dependency Court Mediation Program defines dependency mediation as a confidential process in which specially-trained neutral persons, mediators who have no decision-making authority and make no recommendations to the court, help the family, social worker, attorneys, and others involved in the case discuss and resolve the disputes and problems sent to mediation. The goal is to come up with a plan that all the parties, attorneys, social worker, and CASA agree is safe and best for the children and safe for all involved participants. The confidential nature of mediation is critical to its success in that it helps to create the comfortable and open environment necessary for facili-

tating meaningful discussion of the various issues that arise in child abuse and neglect cases.

The mediation process has four basic interdependent stages: orientation, fact-finding and issue development, problem solving, and agreement/disagreement and closure.

Practice in Santa Clara County

Background

The Santa Clara Dependency Mediation program operates in a manner consistent with *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines For Policy and Practice—Recommendations from the National Council of Juvenile and Family Court Judges Family Violence Department* ("The Greenbook") recommendations 23 and 48,² as well as California Rule of Court, Section 24.6, *Uniform standards of practice for court-connected child protection/dependency mediation*.

Judge Leonard P. Edwards is Judge of the Santa Clara County Superior Court in San Jose, Calif., and President of the National Council of Juvenile and Family Court Judges.

Both of these require that dependency mediation programs include a specialized protocol for handling domestic violence cases. It is noted here that while domestic violence is an issue resulting in dependency status in only a minority of cases, it has been identified as a significant factor affecting the functioning of one or more family members in approximately 58% of Santa Clara County dependency cases referred to mediation.

Santa Clara County dependency mediation protocols lay out specific policy and procedures for subject matters including confidentiality, the manner in which cases are referred to and scheduled for mediation, mandatory versus voluntary participation, the involvement of children, orientation of the participants, the stages of the mediation process, complaints, mediator training, and domestic violence.

Santa Clara County dependency system members believe that it is very important that all key case participants, including parents, involved family members, the social worker, child advocate, and attorneys, participate in the mediation process. Each often holds a separate piece of an information puzzle that, when completed, becomes the basis for resolution of the referred disputes. The involvement and advocacy of the attorneys also serve to safeguard the rights of their respective clients, be they children, parents, social workers, or other involved parties. This is especially crucial when a given client is otherwise "without a voice" due to being particularly disenfranchised, alienated, overwhelmed, from a different culture, or simply passive or inarticulate.

The Mediators

The Santa Clara model utilizes a female/male co-mediation team of highly skilled, culturally competent mediators who are also licensed psychotherapists with specialized training in subject areas beyond mediation and directly related to the types of problems likely to arise in dependency cases. These areas of specialized training include, but are not limited to, child abuse and neglect, substance abuse, domestic violence, the workings of the dependency court and child protection systems, the developmental needs of children, family systems, and familiarity with local community resources. This specialized knowledge allows the mediators to better appreciate and understand the perspectives of the various participants as well as the nature of the issues

being discussed. It also, at a very basic level, helps the mediators know what questions to ask in order to get the most relevant information and various underlying interests on the table so that the safety and best interest of the child, as well as the related needs of the family, can be most effectively addressed. Finally, it contributes to the level of credibility, trust, and confidence that all participants have in the mediators themselves and, consequently, to their willingness to commit to the mediation process.

The advantages of using a male/female co-mediation team include having mediators of both genders available to clients in every case. This can make the process much more comfortable for clients who have difficulty communicating with a certain gender, sometimes because of their own histories of childhood abuse and neglect. Additionally, when clients are, for whatever reason, unable or unwilling to advocate for their own interests, the use of co-mediation allows one of the mediators to temporarily serve as the voice for that client while the other runs the process. This helps to balance the power within the process.

It is always helpful when one of the mediators in the case speaks the same language as the participants, though mediation can also produce positive results when interpreters are used.

Referrals and Issues Referred to Mediation

The judicial officer functions as the "gatekeeper" to mediation and either chooses to order the case to mediation based on his or her own judgment or the request of a case participant. The referral to mediation may occur at any time during the history of the case from the initial hearing through termination of parental rights. Any issue in dispute may be sent to mediation including, for example: whether dependency is necessary; the language of the petition; the case plan and/or services; placement or return of the child; placement problems or change of placement; visitation; parental non-compliance with court-ordered conditions; intra-familial, parent-social worker, or other personal conflicts that interfere with implementation of the case plan or otherwise cause problems; termination or continuation of services; dismissal versus continuation of dependency status; custody and visitation exit orders; and issues related to termination of parental rights.

Protocols are clear that it is never permissible to negotiate about whether or not child abuse, neglect, or domestic violence are acceptable behaviors. Exploring the best ways of responding to these problems, however, is very appropriate subject matter for mediation.

The decision by the court to refer a matter to mediation usually occurs during a court appearance in the presence of the various case participants. The parties, assigned social worker, attorneys, and often the CASA are required to attend mediation once ordered by the court. The group decides who, in addition to the required participants, should also be invited. Those invited may include domestic violence advocates, relatives or family friends, foster or adoptive parents, therapists, placement providers, etc. Once the decision to refer the case to mediation is made by the court, the appointment time is selected and the participants are notified, the court order referral form is completed by the court, and the court provides the family members with a brochure describing the mediation process. The judicial officer reviews the court file and selects documents which are immediately forwarded to the dependency mediators for review in advance of the mediation appointment in order to provide them with background information on the case, including information related to any domestic violence issues.

The Process

There are various models of Child Protection/Dependency Mediation functioning around the country. These models are adapted to local court cultures as well as resources and other logistical considerations. The Santa Clara County model works as follows.

One of the mediators reviews the reported background information forwarded by the court prior to the time of the first mediation appointment and discusses the information with the other mediator. One of them will take the lead in the mediation. There are certain premises, based on many years of mediation experience, upon which they will operate. Some of them are:

You can talk about essentially anything as long as the participants are capable of articulating their interests and desires. Talking does not equal agreeing, but talking and listening to one another usually produces constructive

results even in the absence of an agreement. Mediation usually results in families experiencing a lowered sense of hostility and alienation and a heightened sense of participation and inclusion as well as a greater sense of understanding of the child's needs, the workings of the system, and the points of view of the other participants.

People are often less defensive and resistant, and are better able to hear and understand the concerns and ideas of others, only after THEY have had an opportunity to fully express themselves and be heard and understood.

Just getting all the key participants together at the same place and time in a structured setting to sit down and, with the help of skilled mediators, systematically talk things through, exchange the most current, accurate, and relevant case information, and clear up mis-information, serves to resolve a lot of problems.

After everyone feels heard, it is helpful for mediators to keep bringing the participants back to the issue of what is best for the child, i.e., "How do you think we can resolve this particular issue in a way that is best for the child?...Please talk about how you think your plan will affect the child. ... Tell us what your concerns are about the child."

The mediators orient the family members to the mediation process prior to the actual commencement of the mediation session. The next stage usually involves meeting with the group of professionals to clarify and explore the issues referred to mediation. All perspectives are heard, information is exchanged, mis-information begins to be corrected, and some problem solving occurs. The attorneys are then usually released, at their own request, while the mediators prepare to work with the family members, the social worker, and other participants, though the attorneys remain in the area and available to their clients as needed.

The mediators consult with one another and strategize about which family members to see next. If the case includes elements of domestic violence, the involved parties will be interviewed individually, and a determina-

tion is made regarding whether it is safe and appropriate to proceed with the mediation and, if so, the best manner in which to proceed. Every victim of domestic violence is permitted to have a support person with her or him throughout the mediation process and to be seen separately and apart from the other party if she or he so chooses. All parties are permitted to have their attorneys in attendance whenever they wish.

Domestic violence issues aside, the mediators decide whom to meet with next based on the circumstances of the individual case. It may be a large family group, the parents together or separately, the parents and the social worker, the parents and placement provider, or other combinations. About 20% of the time the child is part of the mediation, but the issue of whether or not and how children are included is weighed carefully, consistent with the program protocol. Great care is taken to avoid inadvertently re-victimizing children or making them feel responsible for the outcome of mediation. Children only participate with their attorney's agreement. Often they are seen individually and their feelings and wishes are conveyed back to the larger group.

Mediators always start by listening to the participants until they feel understood. Individuals are permitted to vent as needed and then refocus on the dispute at hand. Mediators attempt to identify and validate the interests of the various participants, and then try to keep them focused on the needs and best interests of the children as problem solving continues. The mediators confer with one another as needed to develop strategies designed to address barriers that arise on the road to conflict resolution.

During the final stage of mediation, the mediators usually meet with the whole group to do final problem solving, finalize areas of agreement and/or disagreement, answer questions, and clarify follow-up responsibilities and expectations. The Santa Clara model has the attorney representing the child protection agency write down the agreement. It is reviewed with all parties and attorneys. All of the case participants then report directly to court where the judicial officer is informed of whether or not an agreement was reached and, if so, the details of the agreement. The judicial officer then ensures that everyone understands the nature of any agreement and decides whether or not to accept it. If there is no agree-

ment on some or all of the issues, the court then determines the next course of action.

Statistics

There are approximately 1,000 new dependency petitions filed in Santa Clara Juvenile Dependency Court each year. A separate petition is filed for each child. During 2000, 223 cases were seen in mediation for a total of 240 sessions. Fifty-two percent of the cases were referred at the request of the attorney for one or both of the parents, 17% at the request of the child's attorney, 5% at the request of the social worker or agency attorney, 21% on the court's own motion, and 5% at the request of all the parties and attorneys.

Forty-five percent of the cases were referred at the jurisdictional stage for disputes about both jurisdiction and disposition, 15% at 6-month review, 7% at 12-month review, 7% at a post-permanency review hearing, 16% at dismissal for exit orders, 4% for interim change of placements, 4% for other interim problems, and 2% at termination of parental rights.

Sessions averaged three hours in length. Children participated in 19% of those cases. Persons beyond the parties, children, social worker, attorneys, and CASAs participated in 57% of the cases. Domestic violence was an element in 58% of the cases, though usually not included in the dependency petition.

Seventy-five percent of the cases resulted in full agreements, 17% in partial agreements, and 8% in no substantial areas of agreement.

B. THE DEPENDENCY MEDIATOR'S PERSPECTIVE

Brendan Cuning, *Dependency Mediator*
Family Court Services and Juvenile Dependency Court,
Santa Clara County

Introduction

Recently an attorney representing children peered in the dependency mediation room window to see if we were finished interviewing the family members. She remarked later, "You were in there a very long time, and you were really getting into it. Everybody looked so focused." She was right. We had a long and intense session with the family members, including the parents. The

encounter led to an agreement that the family members would fully engage in the case plan, and that the child would be moved to a safe placement with an aunt whom the social worker had already approved. The attorney's comments highlighted two key elements that characterize dependency court mediation in Santa Clara County:

- being fully and empathically present to the participants; and
- spending substantial time with participants, especially family members.

Dependency mediation is a cooperative effort to explore disputed issues existing in child abuse and neglect cases in a non-adversarial setting. Through the use of empathic listening techniques and accurate reflection of the cognitive and emotional content of participants' statements, a respectful and safe environment is created. This enables an authentic response on the part of family members, sometimes leading to life-changing decisions and commitments, with the ultimate goal of preserving the safety, best interests, and permanency needs of children. Though there are many methods, skills, and strategies in conducting dependency mediation, in this article we will focus on two critical elements: empathic engagement and spending time with the participants. We will also discuss the potential impact of the work on the mediators themselves, and make some suggestions for reducing negative consequences and increasing mediator effectiveness.

The Process—Special Considerations

About 20 minutes into a recent angry session with parents, my co-mediator changed the emotional tone of the dialogue by asking the mother:

"And you, how are you doing with all this stress?" The question was greeted with the response, "Why, thank you for asking. No one has asked me that before today."

The mother was surprised that the mediator was interested. The mediator's question led to a genuine inter-personal exchange for another 20 minutes, involving continued use of empathic listening skills and reflection of the emotional and cognitive content of the par-

ents' experiences. The validation of the parents' experiences led them to the realization that they were being heard. Their human dignity was being respected. This helped them to move beyond their anger and resistance to deeper emotions of grief and remorse facilitated by further validating responses from the mediators. The parents were then ready to abandon their defenses and to begin to face the issues of drug abuse and child neglect which had brought them to court.

The mediator's respectful listening created an obligation on the parents' part to listen to the other participants—the children, therapists, doctors, witnesses, other family members, the children's attorneys, and the social worker—and respect their viewpoints. The mediators were then able to begin an exploration of the case from all participants' perspectives. At that point, the parents and family members were ready to confront the damage that was alleged to have been done to the children, and to come to realistic decisions about moving the case forward. The maximum impact of constructive empathic listening was achieved.

The mediator's ability to empathize congruently and accurately with family members in dependency cases lies in his awareness of his own feelings. These often will include anger, sadness, and even despair at the images of abuse he or she is exposed to in these frank discussions of human suffering. The mediator's affect may reflect what family members are experiencing at some level. His consciousness can be a source of information from which to further clarify the parents' experience and comprehend it. By conveying that understanding the mediator thus enhances the process.

"It must be horrible for you to have your children removed like that."

"Is it bewildering for you, coming from another culture, trying to understand the dependency system? Does it seem very complicated and indifferent to you?"

"So it seems as though no one really understands you or your situation and that no one really cares."

"You sound really mad and totally scared."

Being present to the parents in a compassionate way does not mean condoning what they have done or not done. Validating the person does not equate with agreeing with his or her behavior. The mediator's validating and non-judgmental approach creates an environment of trust. This constitutes an invitation to the parents to allow the mediator to guide them down a path where they will confront difficult issues and events. They will be called upon to face barriers or to find ways to get around them in order to reach resolution. They will struggle with major life-changing decisions and commitments in order to regain custody of their children. Sometimes they will be facing the most terrifying obstacle of all, confronting their own inadequacies as parents and relinquishing the care and control of their children. This last path can only be taken when the parents' dignity and human worth are preserved.

In a case some years ago involving an Asian-American family, the father, who had molested his daughter, was defended furiously by the child's uncle, aunt, and cousins, as being incapable of such an act. This, of course, meant they had to deny the child's many statements, thus re-victimizing her. In the course of the mediated family discussion, the father, supported by his girlfriend, freely chose to admit to his family that he had done this terrible thing to his daughter. There was shock, grief, and anger expressed at the father, but a pathway towards resolution was opened up by his admission, and the path included a way to healing for the victim and to the support for her by family members.

Family members are often asked to walk a path that may be dangerous. The journey will include discussions of drug abuse, child physical or sexual abuse, abandonment, severe neglect, domestic violence, criminal behavior, and mental health problems. Old ghosts may be called up and encountered. Sometimes a barrier will be located on the path that seems impossible to get around, for example:

A young mother (21 years old) from Mexico cannot have her children back (a 6-month-old

and a 2-year-old) unless she leaves her boyfriend, who has been very violent to her and the children and who remains a danger to all three. But she is dependent upon him. Where would she live? She can't afford to maintain a home. The prospect of going it alone for the first time in her life is terrifying to her.

This was a very frightened young woman. It was not easy for some of the participants to identify with the difficulties of a victimized, non-English-speaking, non-literate single mother being told to, "Go it alone or lose your children." Her only defense was in denial. But, with the intense and empathic engagement of a Spanish-speaking mediator, she was able to move beyond a state of denial and paralysis to explore other alternatives. She was then able to participate in identifying resources within her extended family and, with the help of the other mediation participants, move around the obstacles in her path.

The intense engagement and empathic presence of the mediator is all the more important when the evidence produced in dependency mediation is overwhelming, such as positive drug test results, police reports, medical reports, photographs, and testimony of children and other witnesses. By avoiding condemnation or tones of moral superiority, the mediator can compassionately and respectfully confront family members and participating professionals with information that may be difficult to accept. Often this can be done in the form of a question incorporated into the feedback provided by the mediator, for example:

(To the social worker): "How do you respond to the parents' concern that you are not aware of the progress they have made because you have not been able to come out to their home or to the visitation center to observe their interaction with the child over the last three months?"

(To the mother): "Do you think the social worker has a justifiable concern since two out of the last three drug tests were dirty?... Here's the record of the results the agency returned. Take a look.... She thinks you still have some work to do before moving to unsupervised visits...."

What do you think? Is this a relapse or is there another explanation?"

(To the father): "Peter, here are the pictures your friend took of your 9-year-old daughter when you were away. Here, let her grandmother see them, too. The social worker and the child's attorney believe they are sexually provocative and exploitative of the child. They believe she has been emotionally damaged by this experience. They think you are not protecting her. This must be very painful for you, because you've said how you trusted him, and how you love your daughter. Talk to me about it. What do you think? How do you respond to the concerns of the social worker and child's attorney?...What will you do?"

The mediator can function as an agent of reality in having all key issues placed on the table for open discussion. The mediator brings the participants into a dialogue within a context of the critical events of the children's, parents', and family members' lives. This dialogue will only happen if time has been spent creating an emotionally safe and trusting environment. This process is the key to constructive resolution, made possible by empathic listening.

The Mediator and the Cost

All who work in the field of child protection pay a price for their engagement and their compassion. Child abuse and neglect cases expose us to the "suffering of the innocent." The details of child abuse and neglect are so distressing that participation in mediation can be emotionally wearing for all, including the mediator.

One mediator, after a session which involved a young mother who had three children under four removed from her, including a 10-month-old, (two of the children had been burned with cigarettes by the mother's boyfriend), remarked, "... it is so horrifying to me to think what has happened to these children. I can barely focus on it. I can't think about it."

This mediator had been sheltered in her own life from such trauma, but found that the mediation process

was eroding any naiveté and innocence that she had retained. Interestingly, she stated that it is also a privilege to be with people in the teeth of the worst things that can happen to them. The brief but intense experience of the mediator-parent encounter reduces the mediator's insulation from the parents' deeply troubled lives. But while it keeps the mediator connected with real human suffering and can enhance compassion for clients, it also holds the potential for taking an emotional toll on the mediator's own life.

A dependency mediator sat at home on a beautiful Sunday afternoon in New England. Everything in her life was right, but she was feeling inexplicably depressed and even had feelings of despair without knowing why. As she thought about it, images began returning to her from a dependency mediation she had done during the previous few days. It had been a tragic case, involving the death of an infant. It took her days to shake off the impact of that case.

This sad case reveals how the sorrows in others' lives can resonate in our own. This mediator was able to acknowledge, tolerate, and express her feelings. Her ability to do this allowed her to quickly recover, and the case and related feelings created no further problem for her. Her healthy reaction illustrates the critical importance of self-awareness. Our experience suggests that the ability to process the feelings and reactions resulting from involvement in child abuse cases contributes to increased mediator effectiveness and longevity.

But many cases may get under the skin. Painful feelings that remain out of consciousness have the potential to negatively impact the mediator and his or her relationships and family life. If a mediator is particularly affected by a case, it is important that he or she is aware of those feelings, understands their origin, and is prepared to talk about them, without violating case confidentiality, with a supportive person. Debriefings with a non-mediator, such as a trusted mentor in the office, can help bring the experiences of dependency mediation to the surface and let them find expression. It may be necessary to explain these issues to family members and friends so that related moods and behaviors are under-

stood and not taken personally. Dependency mediators realize that these same considerations may apply for judges, attorneys, and especially for social workers who are on the front lines.

Another possible cost for the mediator is cynicism and combat fatigue. It can be personally draining to begin the day by reading the details of yet another case of child abuse. There is a risk that we may fall victim to emotional numbing, a natural process that allows one to keep functioning on the job, albeit with a loss of compassion. When this happens, distancing takes the place of being present, and psychic withdrawal takes the place of personal engagement. A successful dependency mediator needs a healthy balance between toughness and compassion, between durability and sensitivity, between objectivity and empathy. When either side of this scale is significantly out of balance, dependency mediation becomes less effective.

A Mediator's Comments

A few weeks ago I spied a family leaving the courtroom. They were laughing, and the children were carrying balloons. The children were going home. I was in the mediators' office with two distraught parents whose children had just been made dependents of the Court. They were at the beginning of a dangerous path. But looking at the family strolling past, they were able to believe that reunification was possible. They found hope for the journey. It is a privilege to be allowed into people's lives at a time of their greatest vulnerability. It is a privilege and a challenge to join them even briefly on their journey, one that dependency mediators have almost every day.

We bring to the table our professional skills, but first, we bring our common humanity. The professional skill of empathic listening can be learned, but its source in human compassion must be discovered. By being present to them, they will often be encouraged to make decisions that will allow them to protect their children and guarantee their safety. That is the goal of the Court. It is the goal of dependency mediation. It is what makes it all worthwhile. Then we can bring out the balloons.

Note: All cases quoted from or referred to are composites and not actual individual cases.

C. THE AGENCY SOCIAL WORKER'S PERSPECTIVE

Nicole Gould, Social Worker III

Department of Family & Children's Services, Santa Clara County

Mediation of contested cases in juvenile dependency court can be a wonderful and satisfying experience for all involved. It is typically used when other attempts at communication have failed to resolve the issues in dispute. At its best, mediation allows all parties to be heard in an open setting that is less adversarial than a trial or other court hearings. It has been my experience that it is always worthwhile, even when it does not end in an agreement.

Some social workers have expressed feeling wary and suspicious when they first approached mediation because they thought of it as being similar to a trial. However, they learned through their participation that mediation is very different from an adversarial proceeding.

Communicating with attorneys can be a daunting task for many social workers. The informal yet structured atmosphere inherent in mediation assists the worker by allowing for more open and comfortable information sharing, especially during the initial case presentation phase. It is during this initial stage that all parties have an opportunity to clarify the case issues and points of contention so that everyone is starting at the same place. The social worker is particularly instrumental in the success of any mediation since he or she is typically the only participant who has had access to all of the parties and information, noting that the attorneys usually communicate only with their clients. An additional beneficial aspect of our dependency mediation program is that the mediators have a clinical background. This allows the social worker an additional degree of comfort in communicating from a clinically relevant perspective.

I have several roles as an investigating social worker. I must find out the facts of a case and report them. I must also provide services to the parents that will enable them to address the difficulties that resulted in their children coming to the attention of the juvenile court. Mediation has helped me develop better working relationships with parents in many cases, especially those in which communication has been difficult. Mediation has also served to help clarify my role for the parents and

assisted me in communicating my desire to help the family create a plan in the best interests of the child. It has been my experience that mediation improves communication in almost every contested case and results in the disclosure of new and helpful information by the family.

Arguably, the greatest benefit of mediation is its ability to assist the parents in feeling heard. Many parents contest issues and recommendations not because they are arguing that the information provided the court is untrue, but because they feel unheard and believe the court reports do not accurately or completely reflect their points of view. Like most social workers in child welfare, I have had some very contentious cases in which I could not communicate at all with the parents due to the level of hostility. I have seen these cases reach agreement in mediation and thereby avoid trial once the parents felt heard and validated by our mediators.

A good mediator in dependency court must possess not only the ability to hear clients, but also to challenge them. It is crucial that they have an understanding of the dependency process and the policies of the child welfare department. Our county's mediators appear to be able to achieve a good balance between validating the parents and gently challenging them, when needed, on their perceptions or beliefs. They also balance their clinical orientation with the legal needs of the court process.

It has been my experience and that of other social workers that mediation can resolve contested issues in a manner satisfactory to all parties even with cases that appear destined for trial. The use of mediation allows all parties, especially the parents, to feel heard and to leave the process with their dignity and self-respect intact. It also goes a long way towards preserving the relationship between the agency and the parents, which ultimately most benefits the children.

D. THE AGENCY ATTORNEY PERSPECTIVE

**L. Michael Clark, Joanne Hue, Julie McKellar,
Charles Nickell, Kimberly Warsaw**
Office of the County Counsel, Santa Clara County

Agency attorneys play an important role in facilitating the mediation process. Initially, we lay the foundation

for a successful mediation by meeting with the agency social worker before the mediation date to review both the mechanics of the mediation process and the complexities of the specific case. We bring to the meeting, and later to the mediation, a familiarity with both the case file and all applicable statutory and case law governing the case. We are then able to help the social worker articulate in concrete terms his or her clinical concerns and desired outcome for the mediation within the governing legal parameters.

At the beginning of the mediation session, we help the mediators and attorneys for the parties to: 1) understand the factual and procedural history of the case; 2) clarify the specific factual and legal issues to be addressed; and 3) focus on the various permissible legal outcomes available for the particular mediation. When necessary, we assist the social worker in articulating his or her case. However, we find that because social workers are trained to discuss their cases in a clinical context, they often find it easier to present their assessment in the collaborative atmosphere of a mediation than in the adversarial atmosphere of the courtroom. After the initial discussion is finished, we then encourage the attorneys to step out of the room so that the mediators can begin their therapeutic work with the parents, social worker, and other interested parties. We find that the mediation process often works best when the attorneys remove themselves from the process. While the actual mediation is taking place in the mediation room, we often engage in further case discussion with the attorneys outside the mediation room.

At the conclusion of the mediation, we meet with mediators, attorneys, and parties to discuss the outcome, make notes of the terms of any full or partial agreement, and then put the settlement on the record in a clear and concise manner. While many settlements are simply recorded in the clerk's minutes for the hearing, if necessary we will prepare a more formal written order after the hearing for complex agreements. Our goal is to keep the process on track, to make sure that all the relevant issues have been adequately addressed, and to clarify the details of the settlement.

Many of us were initially resistant to the idea of spending a half-day in mediation. As litigators, it seemed more expedient to proceed with trial. Further, as trial lawyers we tend to be more comfortable with the adver-

serial process than with the clinical process. However, we have come to embrace the use of mediation at all stages of the dependency process because of the remarkable success rate and the fact that the parents and social worker usually come away from a mediation on much better terms than if the case went to trial. Additionally, we have observed how parents are more likely to follow through with mediated agreements they have helped devise than with orders imposed upon them following a trial.

We believe that a key factor in the success of dependency mediation in our county is the particular assignment of mediators to cases. Our mediators are licensed clinicians with experience handling child abuse, domestic violence, substance abuse, and family court custody cases. They mediate several cases per week which, over the course of a year or two, enables them to understand the legal parameters of the dependency process and to gain the trust of the social workers, attorneys, and judicial officers assigned to dependency cases. The use of two mediators for each mediation, one male and one female, also contributes to the success of the mediation process.

Another significant factor in the success of dependency mediation is the cooperative attitude toward mediation that has developed over the years between the various attorney offices. While still protective of our respective clients, we have come to collectively trust the mediation process to reach the right result in most instances. In particular, as agency attorneys, we have seen the mediation process help the social worker to better understand the needs of the family and, on occasion, cause the social worker to change his or her recommendation based upon input from the mediators. Still another key factor in the success of our dependency mediation program has been the willingness of the mediators to learn dependency law and procedure. Over the years we have conducted a number of training seminars for new mediators to help them understand the complexities of the juvenile court dependency process.

While mediation does not resolve every case to our satisfaction, we believe that dependency mediation is a valuable tool for protecting children and helping parents to feel a sense of ownership in the outcome. Mediation sessions offer parties and counsel additional time to work out settlements that the busy court calendar does

not afford. Mediation also offers the parents a third-party sounding board that often facilitates cooperation with the case plan.

E. THE ATTORNEY FOR THE CHILD PERSPECTIVE

Penelope M. Blake, Supervising Deputy District Attorney, Santa Clara County

Mediation is a valuable addition to the court's resources, giving attorneys and their clients a chance to come to a negotiated compromise. The role it fills is one that the courts cannot fill. The courts will ultimately make orders that are likely to be seen as impinging on the lives of the participants in the court process. On the other hand, the mediators can interact with the various parties without the same indicia of authority. Mediation allows the parties to vent and be heard, while serving as a mirror to assist participants to see themselves as others see them. It also provides a forum for attorneys to discuss issues openly with one another as the process itself frequently allows clients to modify their positions. Thus, mediation provides a service without which it is likely that much court time would be needlessly expended.

Children are present in relatively few of the Dependency Court mediations. That is not to suggest from the perspective of the children's attorneys that mediation is not a valuable tool. It is our impression that, in the majority of cases, the mediation process deals with the language of the petition, with placement issues, or with exit orders³ preliminary to dismissal. The presence of the children in these cases is rarely essential. The perspective of the children, however, is essential, since, in most cases, the children's attorneys can make their clients' views known. On rare occasions when, for example, there is direct conflict between older children and their parents, the mediators may want to hear directly from the children, and sometimes those children can be empowered by a process that actually gives them a voice. Whether they are present or not, the mediation process is still very important to the child, as it allows the participants to focus on the best interest of the child with the help of skilled mediators. Our mediators are trained in issues of child development and family dynamics and can frequently help focus all participants on the

child's best interest. This is important, as it frequently results in a far better outcome for our child clients than can be achieved by an adversarial, winner-takes-all process, which is the hallmark of a court trial.

F. THE PARENT PERSPECTIVE

Forwarded by:

John Nieman, Attorney Representing Parents
Dependency Legal Services

"I wanted to have a trial because going along with everyone just wasn't working. I was mad at my attorney and didn't really want a mediation. I didn't understand what a mediation was, and didn't think it would do any good. I couldn't figure out why they weren't giving me my children back and so I wanted to fight. I thought I had done everything I could and they had to give them back. But I felt totally different about everything after it. I could tell the mediators were actually listening. It seemed like I was getting some respect. It didn't seem like I was fighting. Like I didn't need to fight no more. For the first time what the social worker said made sense, and I agreed with her about what was going on. It's like it came clear to me. I was crying a lot and explaining about everything and then just felt OK about it all. It felt a little funny after. All of a sudden I could tell that I had made a lot of mistakes. I felt so much better about everything after the mediation. I couldn't understand why I didn't get it sooner." — Karen H.

"My mediation was about what was going to happen to my daughter. I wanted to have a trial but my attorney told me we probably couldn't win a trial and to try a mediation. Before the mediation all I could think about was how much I hated them and how they screwed me. The mediators helped me realize it was really hard to take care of her and how I had a lot to do before I could take care of her good. I may never be able to do that. It got me

to see that she is the one who really suffers. I still don't really trust the social worker, but I think everyone just wants the best for her. I can live with that. The mediators did that. Maybe because they were new. But I could tell they were interested in what I said, and they were straight with me. The mediation was a good thing." — Michael S.

"We had a mediation about my parental rights being terminated. My aunt and uncle were the foster parents and wanted to adopt my son. I'll never forgive my attorney that my parental rights were terminated. I know it wasn't his fault, but that's just the way I feel. The mediation was good. Things are much better between me and my son's adoptive parents. I'm sure I'll be able to see him fine now. We went out to lunch after the mediation. Before that, I hated my aunt and uncle and hated the idea of my son being adopted by them. I still have some misgivings, but I feel better about it now. I think that without the mediation it would be a long time before I could really be civilized with them." — Tonya L.

G. THE ATTORNEY FOR THE PARENT PERSPECTIVE

Brian Manion, Attorney Representing Parents
Dependency Legal Services

Each year, Santa Clara County Child Protective Services receives in excess of 20,000 telephone calls reporting suspected child abuse. More than 85% of the calls result in a social worker doing some level of investigation to determine the validity of the call. Approximately two-thirds of the calls result in an in-depth investigation by an emergency response worker. When a call reveals a family with significant problems that may put a child or children at risk of harm, usually a social worker can assist the family informally and, with the family's cooperation, resolve the issues. In the end, approximately 1,000 cases are so severe, the family refuses to cooperate with the social worker, or the case has

previously been in the court system and the family continues to struggle with the same problems, that the social worker must file a petition with the court and bring the family into the court system. This is when the parents' attorneys get involved.

The first thing we as parents' attorneys must convey to our clients is that dependency court is like quicksand—the harder you fight, the faster you will sink your case. Our clients have serious problems that took years to develop, but often they have only a few months to “fix” them. For example, a mother who abused drugs for ten years and gave birth to a child with drugs in the child's system, was only given six months to get clean and sober. The time allowed to work on these problems begins when a child is first removed from the care of the parent. Once this “clock” starts ticking, it does not stop. You can fight the system, but the fight succeeds only in using up valuable time and emotional energy that this parent should spend getting clean and sober.

What is mediation? If you look into the mediation room, you will see all the parties sitting in a small, cramped room, around a tiny table that seats only four of the eight or nine people present. Sometimes it looks like everyone is speaking at once as the mediators furiously scribble notes to capture the essence of five different versions of one set of facts. Sometimes it looks like no one is talking at all and you wonder what they are waiting for.

However, if you are inside the process, you know that mediation is, in a sense, a kind of group therapy for lawyers and social workers to work out their conflicts. For the parents' attorney, it can sometimes feel like you have been thrown to the lions. The district attorney yells, “Your client's an idiot, he keeps using drugs despite repeated arrests, and he always gets caught.” The social worker laments, “Your client refuses to take his anger management class, or see his therapist, or go to drug testing, and he keeps going around the mother in violation of the no-contact order.” Everyone chimes in, “Your clients refuse to take their medications and clean up the house so the kids can go home.” Put all of this raw emotion into a small room, early in the morning or late in the day, and you cannot help but wring yourself out emotionally. This is when the mediators get involved.

The mediators act as umpires and referees, they tell some people to quiet down and others to speak up.

The mediators prod and pry, they cajole and persuade, and most important of all, they play the devil's advocate. The mediators open our minds, they get us to consider all options and to be creative in thinking of more. They help the case along, ever so slowly at first, then in a flurry of activity at the end. The mediators are the cogs in the machine that force us through the process, sometimes kicking and screaming, until we extract all of the benefit there is from each mediation. And there are many benefits to mediation.

The primary benefit of mediation is that it is the great equalizer. Everyone gets to present his or her side of the case to an impartial third party—the mediator—who has no stake in the case. No one has any extra pull, no one has more credibility than the others, and the rules are the same for everyone. The mediators try to keep everyone on track and stick to the issue at hand. In the close quarters of the mediation room, egos and emotions give way to the facts and the legal realities. Eventually, even though perspectives may differ, all focus rests on the best interests of the child. It is in this sense that a parent really gets accountability out of the system.

Another benefit is that the judge only hears the positive outcome from the mediation. In a trial, the judge hears all the facts of the case—the good, the bad, and the ugly. Once the judge hears all of this, he or she never seems to forget the bad parts, and the parent can have an uphill battle to get the judge to change his or her perception. On the other hand, in mediation, all discussions are confidential and never leave the mediation room. Once the participants work out their differences and agree to a specific outcome, all parties go into court and the judge, with few exceptions, approves the settlement of the case. The parent thereby begins the next phase of the case with a clean slate and no excess baggage with the judge.

This, however, does not represent the end to the benefits of mediation. When the social worker, the parents, and the attorneys invest so heavily in the process, they each have a stake in the outcome. This creates an environment of support and cooperation for at least the next six months of the case. This added support more often than not gives the parents the incentive they need to continue to work hard on their programs and services and, thus, they are much more likely to reunify with their children. In fact, a single, hard-fought mediation can have a positive impact for the life of a case.

For these reasons, we, as parents' attorneys, choose informal dispute resolution options such as mediation as our first line of defense in dependency court.

H. THE DOMESTIC VIOLENCE VICTIM ADVOCATE PERSPECTIVE

Nancy Marshall, *Victim Advocate Coordinator*
Living Without Violence Batterer's Intervention Program,
Santa Clara County

The primary role of the domestic violence victim advocate in any venue is to provide information, support, referral resources, and assistance with safety planning. Advocacy must be safety-driven, with each survivor's unique situation and needs factored in. Successful advocacy does not involve giving advice; rather, it is about supporting the victim or survivor as she makes her own decisions. To establish and maintain trust, and for safety reasons, all communication between advocate and survivor is confidential, with exceptions being mandated reporting of suspected child abuse and danger to self or others.

Cautions and Concerns in Mediating Domestic Violence Cases

Domestic violence is a complex issue consisting of a diversity of abusive behaviors. Ultimately, it is about power and control. Over time—months to years, depending on the relationship—many perpetrators are able to instill fear and exert tremendous control over their victims with seemingly innocuous motions, gestures, facial expressions, words, or statements. Working with victim and perpetrator conjointly, in any setting, can exacerbate psychological symptoms (e.g., post-traumatic stress disorder), escalate the violence, and in the worst-case scenario, increase the lethality risk to the victim.

Mediation should be done separately, for safety reasons, in most domestic violence cases. There will be exceptions. Mediation should always start with the victim of domestic violence being seen separately. The mediators need to assess the nature of the domestic violence and the related safety issues in the particular case, and the survivor needs to have received some basic education about domestic violence so she is able to make an informed decision about what is safe for her. If

she then indicates that she wishes to be seen together with the other party—and the mediators agree that it is safe and appropriate to do so—it would be appropriate for them to be seen together. When a no-contact restraining order is in place, concurrent mediation is contraindicated. A domestic violence protocol is imperative. In Santa Clara County, under the direction of the Assistant Director of Family Court Services (an expert in the field of domestic violence), mediators receive specialized training on domestic violence from a diversity of domestic violence specialists.

In my experience in the Juvenile Dependency Court in Santa Clara County, mediation involving domestic violence cases will include at least one domestic violence specialist (advocate, mental health provider, social worker, or a certified batterer's intervention program provider). Mediation in this venue combines a protocol with a high level of awareness of and respect for safety issues and risk factors on the part of the mediators, and support by a court system that has been very involved in understanding and providing for the specialized issues and concerns that arise in domestic violence cases.

Preparation for Mediation

Meeting with the survivor and her attorney together prior to mediation is an important part of the mediation process. The attorney can help prepare the survivor for mediation by providing information about why mediation is taking place, advise what her rights are during mediation, and help the survivor clarify what she would like to accomplish in the mediation process.

Preparing the survivor for any emotional triggers that could arise during mediation is one of the roles of the advocate. Hot-button issues and veiled threats may inadvertently be brought to the survivor by the mediator; e.g., during the relationship, her batterer may have blamed her for his violence by saying she didn't know how to communicate. If he suggests to the mediator that classes on communication may help resolve co-parenting issues and the mediator brings this suggestion back to the survivor, the survivor could interpret the suggestion as a veiled threat. She may be triggered emotionally, react with anger, shut down, or withdraw. She may have a flashback. Effective advocacy includes preparing the survivor for potential hot-button issues, determining techniques that will encourage her to stay grounded and

maintain her focus, and supporting her decision of whether or not to address hot-button issues if they arise.

Another role of the victim advocate is to work with the client to ensure safe arrival to and departure from the court, as well as her safety in the courthouse. Being in the courthouse does not guarantee safety for the victim/survivor. Intimidation, threats, and assaults can and do happen in the courthouse. In Santa Clara County, the Juvenile Dependency Court has a separate waiting room in a secure area of the court which can be used in high-risk cases. (Bailiffs are alert and responsive to any incidents that may occur.)

Levels of Involvement in Mediation

When the survivor meets individually with the mediator, the role of the advocate is that of silent support. The advocate may remind the survivor to take a deep breath or may use other prearranged signals or cues to help her stay calm and maintain focus. The advocate may not otherwise participate in this level of mediation unless invited to do so by the mediator. Interfering with the mediation process can both negatively impact the survivor's self-esteem and sense of empowerment, and can result in the advocate being asked to leave.

Advocate participation in the session with other interested parties requires a release of information if the advocate is to discuss specific information about the survivor. This session can include eight or more participants, each with different issues or concerns about the parent's ability to provide for his or her child, and different levels of knowledge or expertise in the area of domestic violence. This is an opportunity for the advocate to provide information about domestic violence, e.g., what it is, how it impacts, how individuals become victims, general information about safety planning, and what steps may be involved for an individual working to reclaim his or her life after domestic violence. As both a victim advocate and a licensed marriage and family therapist, I am able to provide additional information in areas of concern in child welfare cases (e.g., the impact of post-traumatic stress disorder, treatment options, recognition of the change process, providing a context to facilitate understanding of skills the survivor may have developed to counteract fear, threats, and lethality concerns).

Mediation in the Juvenile Dependency Court in cases involving domestic violence can enhance survivor

safety, empowerment, and self-esteem when the mediators understand domestic violence, provide separate mediation for the parents, work within a domestic violence protocol, and have the support of the Court. I have seen many cases in this venue where mediation was a positive and empowering experience for the survivor, and, as a result, it is a process I encourage.

Safety Concern: Without knowledgeable mediators who have had extensive experience in the area of domestic violence, without a domestic violence protocol, and/or without the support of the court, mediation in domestic violence cases can compromise victim safety and cost lives—whether or not an advocate is involved.

1. THE CHILD ADVOCATE'S PERSPECTIVE

Ann Whyte, Advocate Supervisor

Child Advocates of Santa Clara and San Mateo Counties

Court Appointed Special Advocates (CASAs) bring a unique and important perspective to mediation. The CASA is the one person who is focused solely on the child and has the opportunity to get to know the child well. A CASA in Santa Clara County visits weekly with the child, becoming a trusted friend and spokesperson. The CASA also gets to know the others involved with the child (parents, foster parents, relatives, and friends) and the other professionals in the case (social worker, attorney, therapist, and teacher). By doing this, the CASA is able to understand the needs and circumstances of the child. No one else in the system has the luxury of being responsible for only the child. This in-depth knowledge of the child's situation and needs allows the CASA to contribute information that might not otherwise be available to the mediators. This permits the mediators to get a clearer picture of the child's current situation from the child's point of view, as well as from the CASA's point of view.

The CASA's role in mediation is primarily to give information and to help clarify differing views or discrepancies among participants in relation to the child's needs and desires. Personal knowledge of both the situation and the participants gives the CASA a special insight into what is happening in the family and with the child. The CASA is aware of both the child's needs and feelings. Clearly, the role of the CASA is significantly more rele-

vant in mediations focusing on issues such as placement and visitation rather than ones that focus on subjects less directly involved with the child's needs or wants, such as the parents' progress on their case plan.

CASAs are most useful to mediators when they are involved in the process from the beginning, in any setting where the social worker is involved. This ensures that the mediators will have all possible knowledge when issues are being discussed or decisions being considered. If the child is included in the mediation, the CASA may act as a support person when the mediator talks to the child, if that seems necessary and appropriate. However, the CASA does not speak for the child since it is important for the child, when age appropriate, to have the opportunity to speak for himself or herself.

J. THE JUDICIAL PERSPECTIVE

Judge Leonard P. Edwards, Judge Katherine Lucero, Commissioner Kristine McCarthy
Juvenile Dependency Court, Santa Clara County

The judicial perspective on mediation is unique: The judicial officer is the only member of the court system who does not participate in the mediation process. That, of course, is the point. If mediation works, the judicial officer hears the agreement in open court, approves or disapproves it and, in most cases, makes the appropriate court orders implementing the agreement. If there is no agreement, the court will never learn of the content of the discussion during mediation. Instead, the court will set the matter for the next legal hearing, likely a trial, when the matter will be heard in a formal legal setting.

The judicial perspective has more to do with case management, quality control, and administration of the case and calendar. The judicial officer wants to ensure cases are disposed of in a timely fashion, that the quality of justice for all parties—particularly the child—is high, and that the administration of court calendars is improved. By each of these measures, dependency court mediation has been an outstanding success in Santa Clara County.

First, we have learned that almost every case benefits from mediation, even though for practical reasons, we usually refer only the most complex cases. These are the cases that might take one or more days to hear in a contested proceeding or that raise issues involving family

dynamics that are best worked out in a confidential, non-adversarial setting. Because mediation resolves most of these cases, the court is able to devote its limited resources to other matters and keep the entire dependency calendar moving in a timely fashion.

Second, watching hundreds of cases go through the mediation process has convinced us that mediation produces better, safer, and longer-lasting results than the litigation process. We were not certain that this would be the case when we started the program 10 years ago, but now we are convinced. Apparently, the interaction of all interested parties, guided by the mediators, provides an environment for reaching the best, most workable solutions for the child and family without sacrificing child safety. Additionally, most family members appear to be satisfied with the process. Even if there has been no resolution, we see them come into court with visible satisfaction that they have been heard (perhaps for the first time). We have had a number of parents and relatives thank us for providing them the opportunity to participate in mediation. "Thank you's" are a rare occurrence for judges sitting on any calendar.

Third, mediation has given us the extra time we need to manage our calendars effectively. Without mediation, we would have tried more cases, longer cases, and we would have had more hasty settlements, made on the eve of trial, for the sake of expediency.

The judicial officers in the Santa Clara County Juvenile Dependency Court have different practices with regards to the utilization of mediation. Some use it in any type of case at any time while others prefer to use it for selected types of cases that have been in the dependency process for several weeks. All agree that the vast majority of agreements are accepted by the court, and court orders are made based upon the agreement. One of the reasons that we approve of these agreements is that the process ensures that all interests are heard and are a part of the plan. Another reason is that we recognize workable agreements when we see them, and we see them regularly after mediation.

The judicial officer will sometimes ask questions about the agreement concerning practical matters (how will this get done or who will do this task) or issues that no one discussed in the mediation. These are referred back to the mediation process or are resolved after informal discussion with the parties.

If a case does not settle, it does not mean that the process has not had an effect on the parties. Trials take less time after mediation. The issues tried before the court are clearly identified, and the parties waste less time putting evidence before the court.

From the judicial perspective, dependency mediation is an effective process, one that helps keep the trial calendar under control and which produces better, safer, more satisfactory solutions to child welfare cases at all stages of the proceedings. Because of Santa Clara County's rich diversity, this added tool has given credibility and integrity to an otherwise closed and complex legal system.

K. CONCLUSION

Juvenile dependency actions are legal proceedings, but they are also much more. The law is ill-suited to address many of the issues that come before the court. The majority of problems facing families can best be solved by problem solving in a non-legal environment. Mediation provides the opportunity for families to discuss difficult, emotion-laden issues within a protected setting with professional assistance. Family members can express their pain and concern in a manner unavailable in the formal court process. They can then begin to listen to others and begin making decisions about what is best for their children.

AUTHORS' ADDRESSES:

All authors can be reached through
the Santa Clara County
Juvenile Dependency Court
Mediation Program as follows:
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

END NOTES

¹ Santa Clara County, California, also referred to as "Silicon Valley," is located at the southern end of the San Francisco Bay Area. It is the largest county in the region with a population of approximately 1,700,000. The largest city is San Jose. The population is diverse: 53.8% White (44.2% White, not of Hispanic/Latino origin), 25.6% Asian, 24% Hispanic or Latino, 2.8% Black or African American, .7% Native American, .3% Native Hawaiian and Other Pacific Islander, and 12.1% report some other race (totals over 100% due to persons reporting two or more races). U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, 2000 Census of Population and Housing. <http://quickfacts.census.gov/qfd/states/06/06085.html>.

² Recommendation 23 discussion: "...Where mandated or permitted, mediation and similar approaches, such as family group conferencing, should be used only in settings that develop protocols on its appropriate and safe use, conduct appropriate agency training, and regularly supervise staff about victim safety needs." *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* ("Greenbook"), 1998, National Council of Juvenile and Family Court Judges, p. 67.

Recommendation 48: "In jurisdictions where mediation is mandated or permitted, the juvenile court should refer parties to mediation in child maltreatment cases involving allegations of domestic violence only when: a) mediators are trained thoroughly in the dynamics of domestic and family violence, including child maltreatment, as well as trained in the dynamics of substance abuse, basic psychology and family systems theory, the developmental needs of children, the workings of the local child protection and juvenile court systems, local domestic violence services, and other local community resources; b) the mediation program provides specialized procedures designed to protect victims of domestic violence from intimidation by alleged perpetrators and to correct power imbalances created by the violence with interventions, including the performance of differential assessments of the domestic violence issue, the offering of individual—as opposed to conjoint—sessions for the victim and alleged perpetrator so that they never have direct contact with each other, and permitting the victim to have an advocate in attendance throughout the process; c) the mediation process also provides for the participation of victim and child advocates, the child protection agency, other interested family members and individuals, as well as all involved attorneys and GALs or CASAs, to reinforce further the bal-

ance of power and ensure that the rights of the participants are protected in the search for a resolution that focuses upon the safety and best interest of the child and the safety of all family members; d) mediators are vigilant when involved in discussions concerning the factual basis of the abuse of the child or victim-parent in order to prevent victim blaming and/or collusion with the batterer's denial minimization, or discounting of the significance of the violence or abuse." Greenbook, p. 101.

Recommendation 48 discussion: "...Concern has been expressed that mediation is a process which is unfair and unsuited for cases involving domestic violence in that, when battered women are asked to negotiate with their batterers, the balance of power weighs heavily against them, and the mediation process itself can actually be dangerous or result in inappropriate outcomes due to these factors...However, where mediation is mandated or permitted, if it is conducted in accordance with the guidelines described in this section, the process can effectively empower victims of violence and enhance their safety as well as the safety of their children and other family members. Judges have an obligation to oversee the provision of any mediation services to ensure that mediation is conducted consistent with these guidelines." Greenbook, pp. 101-102.

³ An Exit Order is created when the juvenile dependency court dismisses the dependency case and simultaneously creates a custody order which will be entered into the Family (Domestic Relations) Court file. California law permits the juvenile court to create such custody orders which are then filed in the Superior Court files in related proceedings, or, if no such proceedings exist, in a newly created file. See California Welfare and Institutions Code sections 213.5 and 362.4 (West, St. Paul, MN, 2002). The local court rule in Santa Clara County states: "...If the Juvenile Court determines that jurisdiction of the Juvenile Court is no longer necessary for the protection of the child, the Court may create a custodial order consistent with the needs of the child and thereafter dismiss the juvenile petition and case....The original Court order shall be filed in the Family Court or civil file....If no Court file exists in the Family Court or other Superior Court division or in any other jurisdiction, the County Clerk shall create a file under the names of the child's parents. The file shall contain a copy of the Juvenile Court order." Santa Clara County Local Rule 4.1.